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Squire, Sanders & Dempsey

L.L.P.

Counsellors at Law

1201 Pennsylvania Avenue, N.W.

P.O. Box 407

Washington, D.C. 20044-0407

Telephone (202) 626-6600

Cable Squire DC

Telecopier (202) 626-6780

Direct Dial Number

(202) 626-6677

December 20, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals -- Room TW-A325
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Communication: WT Docket No. 99-168

Dear Ms. Salas:

On Thursday, December 17, 1999, Sheldon R. Bentley of the Boeing Company and David Alan Nall of Squire, Sanders & Dempsey LLP, met in separate meetings with Ari Fitzgerald, Legal Advisor to Chairman William E. Kennard; Mark Schneider, Senior Legal Advisor to Commissioner Susan Ness; Adam Krinsky, Legal Advisor to Commissioner Gloria Tristani; Brian Tramont, Legal Advisor to Commissioner Harold Furtchgott-Roth; and Peter Tenhula, Legal Advisor to Commissioner Michael Powell. Boeing's representative discussed the issued raised in Boeing's written *ex parte* submission of December 2, 1999 and in the attached handout.

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Pursuant to Section 1.1206 of the Commission's Rules, an original and two copies of this letter are being filed with your office for inclusion in the public record. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "David Alan Nall". The signature is fluid and cursive, with the first name "David" being the most prominent.

David Alan Nall

Enclosure

Copy: Ari Fitzgerald, Office of Chairman Kennard
Mark Schneider, Office of Commissioner Ness
Adam Krinsky, Office of Commissioner Tristani
Brian Tramont, Office of Commissioner Furtchgott-Roth
Peter Tenhula, Office of Commissioner Powell



A “Band Manager” Alternative for Private Wireless Spectrum Allocations

Ex Parte Presentation – WT Docket 99-168 –
***In the Matter of Service Rules for the 746-764 and 776-794 MHz
Bands, and Revisions to Part 27 of the Commission’s Rules.***

The Boeing Company
Frequency Management Services
Mail Code: 3U-AJ
P.O. Box 3707
Seattle, Washington 98124-2207
(253-657-6713)

December 16, 1999

I. INTRODUCTION

A simple (novel) and principled approach that could:

- Minimize political compromise (cake and eat it too)
- Maximize fiscal returns (auction revenues), and
- Reduce government and bidders risk, by

Delineating different roles and responsibilities for two different Band Managers

One Band Administrator

AND

A few Band Re-Marketers

II. EX PARTE SYNOPSIS

The Band Manager concept is not a panacea.

Unfocused Private Wireless Auctions increases risk and may flop!

TWO DIFFERENT CUSTOMER SETS JUSTIFY TWO FOCUSED VENDORS

- System Users -- need a Band Administrator
- Service Providers -- need Band ReMarketers

COMPETITIVE BIDDING INCLUDES "CONTRACTING OUT" (In Reverse!)

- Band Administrator pays the Government to perform its service

RECOMMENDATIONS:

- One Band Administrator
- Few (one or two) Band ReMarketers



Contrasting the “Bi-Polar” Private Wireless Community System Users versus Service Providers

Market Segment	P/W System Users	P/W Service Providers
Application	Internal Multi-functional Communications Tailored and proprietary	Regional Dispatch Orientated Services Designed for targeted markets
SIC Code	All Major Industrial Groups ¹	4812 (Radio Communications)
Core competency	All businesses (other than Communications)	(Regional) Communications business
Spectrum Financial Goal	Cost avoidance	Profit, Market share, ...
Spectrum Planning Horizon	Long, multi-year	More near term, Opportunistic
Ability to raise capital <u>for obtaining spectrum</u>	Low (outside of core business)	Low to high - depends on spectrum needed (& current shortage or surplus)
Spectrum costs limited by	Allocations on internal users (cost recovery)	Competition from alternative services
Executive awareness of FCC auction authority	Low, Too many layers of management (Only core issues rise to Executive levels)	High, Growth requires understanding of spectrum markets (availability and costs)
Spectrum “Vendor”	Band Administrator	Band Re-Marketer

Conclusion:

The two groups cannot be treated equitably by compromise! (i.e., Band Manager)

The secret of success is Constancy to Purpose.²

¹ Major Groups 01-09 (Agricultural, Forestry and Fishing), 10-14 (Mining), 15-17 (Construction), 20-39 (Manufacturing), 40-47 and 49 (Transportation, Electric, Gas, and Sanitary Services), and certain Services and Public Administration.

² Benjamin Disraeli

COMPETITIVE BIDDING INCLUDES “CONTRACTING OUT”

“Upon enactment of this provision, the FCC shall *initiate the competitive bidding process* in fiscal year 1999 *and shall conduct the competitive bidding* in a manner that ensures that all proceeds of such bidding are deposited in accordance with section 309(j)(8) of the Act not later than September 30, 2000. (*Emphasis added*).”³

Old “Procurement” Headaches can be avoided!

- OFPP (Office of Federal Procurement Policy)
- “Inherently Governmental” (OMB Circular A-76)
- “Best Value” (versus lowest cost or greatest benefit)
- Public “down selection” processes

Novel Approach of Band Administrator paying the Government to “perform its service”

- Should get good press coverage

³ S. 1122, 106th Cong. § 8107 (May 25, 1999).

Contrasting the Distinctly Different Roles of Band Administrator AND Band ReMarketer(s)

Spectrum "Vendor"	Band Administrator	Band Re-Marketer(s)
Market Segment Served	P/W System Users	P/W Service Providers
Goals	1) Serve the needs of this market segment 2) Maintain cooperative environment 3) "Small" efficient spectrum allocations	1) Serve the needs of this market segment 2) Introduce and sustain competition 3) Generate maximum revenues
Eligibility Criteria	1) Not the winning Band Re-Marketer 2) Not Radio equipment manufacturers unless there is structural separation from parent.	1) Not the winning Band Administrator 2) Not Radio equipment manufacturers unless there is structural separation from parent.
Proposal Evaluation & Selection Criteria	1) Offering a price "Schedule" 2) Specification of a set of fiscal incentives for efficient spectrum usage 3) Plan for avoiding congestion and prolonging spectrum inventories	1) Highest bid price 2) Best processes proposed for "reselling" 3) Plan for growing spectrum demand

One Band Administrator (like one Federal Government)

- License Unused Spectrum for "extra" Administrator Revenue⁴
- Demonstrate feasibility for Public Safety and other "Public Good" Applications

Few Band ReMarketers (one or two)

- Re-Auction (or Fixed Price Reselling) of spectrum?

⁴ e.g., flexible allocations and active secondary market(s)

III. CONCLUSION

This "Band Administrator" and "Band ReMarketer" approach is Targeted and Simple

This proposal rests on:

- Each Private Wireless Licensee's self-declaration of "User" or "Provider"
 - Users cannot be Providers, and
 - Providers cannot use the Band Administrator
- Revenue stream determines Private Wireless Class (Contamination = Provider)

Incentives flow naturally from the "Bi-Polar" Private Wireless Marketplace

Fair to all consumers and prospective and selected contractors

Regulatory risk is minimized (with little, if any, additional work)

It is fail safe:

- Band ReMarketers will realize market efficiency
- Band Administrator will also realize spectrum technical efficiency, and
- Both auctions will maximize returns.